

## REMARKS

### **I. Introduction**

Receipt of a final Office Action dated July 18, 2006 is acknowledged. In the action, the claims are rejected as allegedly not enabled (claims 1-11, 21-32, 40-50, 52, 53, and 58-60) and for obviousness-type double patenting over 09/851,422 (now US Patent No. 7,094,750) (claims 1, 2, 7, 13-15, 17, 18, 20-23, 28, 34-36 and 38), over the '422 application and in view of Glazier (US Publication 20030138432) (claims 1, 2, 4-10, 13-23, 25-31, 34-39 and 60), and over 11/131,443 (claims 1, 2, 7, 13-15, 17, 18, 20-23, 28, 34-36 and 38).

Applicants respectfully request reconsideration of the present application in view of the reasons that follow.

### **II. Status of the Claims**

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

In this response, claims 1, 22 and 40 are amended. Support for the amended claims can be found throughout the specification, and in paragraphs [0022], [0025], and [0027] in particular. Upon entry of this amendment, claims 1-11, 13-32, 34-50 and 52-60 will be under examination.

It is acknowledged that the foregoing amendments are submitted after final rejection. However, because the amendments do not introduce new matter or raise new issues, and because the amendments either place the application in condition for allowance or at least in better condition for appeal, entry thereof by the Examiner is respectfully requested

### **III. Rejection of the Claims Under 35 U.S.C. § 112, 1<sup>st</sup> Paragraph**

Claims 1-11, 21-32, 40-50, 52, 53, and 58-60 are rejected as allegedly not enabled. In particular, the claims are rejected because “while being enabling for how to make

procytotoxins comprising cytolytic peptides having amphipathic alpha-helical structures and how to use said protoxins in the targeting of cancer cells, does not reasonably provide enablement for how to make protoxins which do not comprise amphipathic alpha-helical structures. Applicants respectfully traverse this ground of rejection.

In the interest of expediting prosecution, and without acquiescing to the Office's rejection, Applicants amended claims 1, 22 and 40 to recite that the cytotoxic peptide is a pore forming cytolytic peptide that comprises an amphipathic alpha-helical structure. Support for this amendment can be found in paragraphs [0022], [0025] and [0027] of the specification.

#### **IV. Rejection of the Claims for Obviousness-Type Double Patenting**

The claims are provisionally rejected for obviousness-type double patenting over claims 1-26 of copending application 09/851,422 (now US Patent No. 7,094,750) alone (claims 1, 2, 7, 13-15, 17, 18, 20-23, 28, 34-36 and 38) and in view of Glazier (US Publication 20030138432) (claims 1, 2, 4-10, 13-23, 25-31, 34-39 and 60). Claims 1, 2, 7, 13-15, 17, 18, 20-23, 28, 34-36 and 38 are rejected over claims 1-22 of copending application 11/131,443.

Applicants respectfully request that these rejections be held in abeyance until indication of allowable subject matter by the Office.

### CONCLUSION

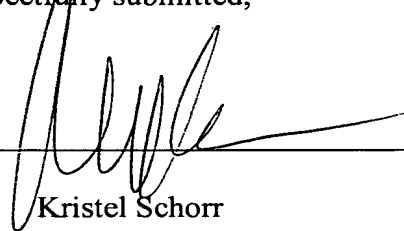
Reconsideration of the present application in view of the foregoing amendments and arguments is kindly requested.

It is respectfully urged that the present application is now in condition for allowance. Early notice to that effect is earnestly solicited.

Examiner Canella is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

By



Kristel Schorr  
Attorney for Applicant  
Registration No. 55,600

Date: Nov 20, 2006

FOLEY & LARDNER LLP  
Customer Number: 22428  
Telephone: (202) 672-5300  
Facsimile: (202) 672-5399